IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

WRIT PETITION NO.13110 OF 2004
in
W.P.M.P.NO.15304 OF 2004

1. Union of India,
rep. by the Chief Secretary,
Government of Pondicherry,
Pondicherry.

2. The Directorate of Accounts &
Treasuries,
Government of Pondicherry,
Pondicherry. .. Petitioners

-Vs-

1. Dr.M.K. Santhosh,
Senior Medical Officer (Retd.)
Sree sylam Thiruvangad,
Tellicherry, Kerala 670 103.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.T. Murguesan
Government Pleader for
Pondicherry

For Respondent-1: Mr. Vijayshankar

:O R D E R

(Order of the Court was made by P.K. MISRA, J.)

Heard Mr.T.Murugesan, Government Pleader for Pondicherry for the petitioners and Mr. Vijayshankar for Respondent No.1.

2. On consent of the counsels appearing, the writ petition itself is taken up for final disposal.

3. The writ petition has been filed on behalf of Union of India, represented by the Chief Secretary, Government of Pondicherry and the Directorate of Accounts & Treasuries, Government of Pondicherry against the order dated 29.1.2004 passed by the Central Administrative Tribunal, Madras Bench in O.A.No.640 of 2003, where under the Tribunal has quashed the order dated 9.5.2003 passed by the present petitioners and directed them to pay interest at the rate of 9.5 per cent per annum on Rs.3,13,471/- from the date of actual termination till the final date of settlement.

4. The facts in brief giving rise to the present writ petition are as follows :-
The present respondent No.1, hereinafter called the employee, had joined service under the Union Territory of Pondicherry, hereinafter called the employer. While the employee was functioning as Senior Medical Officer, he applied for leave for looking after his ailing sister. However, leave was not granted and a disciplinary proceeding was initiated against him. Ultimately by order dated 8.2.2001, passed by the employer, the employee was removed from service as contemplated in Rule 11(viii) of CCS (CCA) Rules, 1965 with effect from 2.2.1999, the date of his unauthorised absence. On 5.3.2003, the employee was allowed to withdraw a sum of Rs.3,13,471/- towards the settlement of GPF Account. However, the employee made a representation dated 10.4.2003, claiming that interest on the deposited amount should have been calculated till the date of payment and not till 2.2.1999. Pursuant to the aforesaid representation, the employee was informed by letter dated 9.5.2003 that interest had been calculated upto January, 1999 taking into account the date of termination with effect from 2.2.1999 . It was indicated that the interest cannot be granted beyond the date of termination as per proviso under sub-Rule (2) of Rule 11 of GPF Rules, hereinafter called the Rules.

5. Thereafter, the employee filed O.A.No.640 of 2003 contending that there was no justification to calculate interest till 2.2.1999 and interest should have been calculated atleast till the date of order of termination. It is also contended that as per the GPF Annual Statement received by the employer for the year 2001-2002, it was apparent that a sum of Rs.4,34,533/- was lying to his credit, whereas the employer has been allowed to withdraw Rs.3,13,471/-. It was contended that the order of termination could have taken effect only from 21.2.2 001, when the termination order dated 8.2.2001 was communicated. It was also contended that the amount payable to the employee was lying with the employers and they were bound to pay interest till the date of actual payment.

6. A reply was filed on behalf of the employers indicating that as per the order of termination dated 8.2.2001, the order of removal was effective from 2.2.1999. The order dated 8.2.2001 has been communicated on 21.2.2001 and the interest had been rightly calculated till the end of

January, 1999, as the employee was removed from service with effect from 2.2.1999. It was admitted that GPF Annual Statement was prepared upto the end of the financial year 2001-2002 on the accumulation standing to the credit of the employee. However, it was indicated that as per Rule 11(2) of GPF (CS) Rules, interest should be calculated only from the date on which the amount is payable, that is to say, the date of removal from service. It was further indicated that according to Rule 34(3) of the Rules, the claimant in respect of GPF Account should make his own arrangement to receive the payment and since he did not file any application, delay is attributable on the petitioner and in such cases he is entitled to interest under Rule 11 only.

7. The Tribunal came to the conclusion that Provident Fund was lying with the employers even after the issuance of the final order of removal and till it was disbursed in March, 2003. Therefore, the employer was duty bound to pay interest on the amount lying with them. Accordingly the application was allowed.

8. The rather laconic order of the Tribunal practically does not contain any reason as to why interest had been directed to be paid. The question relating to payment of Provident Fund and interest thereon is undisputedly covered under the GPF (CS) Rules. The employers have relied upon Rule 11(2) of the Rules to come to a conclusion that interest is payable till the date of termination or removal from service and in the present case, such removal being on 2.2.1999, interest had been accordingly calculated.

9. There is a basic flaw in the aforesaid stand of the employer as we find that the order of termination dated 8.2.2001, which was communicated on 21.2.2001, indicated as if the order of removal would be effective from 2.2.1999. Dismissal or removal of a Government employee from service retrospectively from an earlier date is unknown in service jurisprudence. It is not disputed that the authorities have initiated proceedings against the employee and an order of removal was passed on 8.2.2001, which was communicated on 21.2.2001. Such order of termination or removal would be effective only from the date of order, that is to say, 8.2.2001. Even though in the said order it was indicated that it would be effective from 2.2.1999, such direction being contrary to the accepted norms of service jurisprudence, cannot be countenanced.

10. It is of course true that the employee had not sought for any relief to quash or even modify the order of termination nor he has sought for any pecuniary benefit such as payment of salary, etc., till the effective date of termination. That however would not stand in the way of construing the order of termination to be effective from 8.2 .2001 and not retrospective from 2.2.1999. Therefore, on the aforesaid basis the employees had committed illegality in calculating the interest till the end of January, 1999.

11. The next important question is the date till which such interest is to be calculated. For the aforesaid purpose, the provisions contained in Rule 11 of the Rules is relevant. The departmental authorities have relied upon Rule 11(2). That only indicates regarding the date on which the Provident Fund became payable. However, the date till which such interest is to be calculated is specifically stated in Rule 11(4), which is quoted

hereunder:-
 11(4) In addition to any amount to be paid under Rules 31,32 or 33 , interest thereon up to the end of the month preceding that in which the payment is made, or up to the end of the sixth month after the month in which such amount, became payable whichever of these periods be less, shall be payable to the person to whom such amount is to be paid:
Provided that where the Accounts Officer has intimated to that person (or his agent) a date on which he is prepared to make payment in cash, or has posted a cheque in payment to that person, interest shall be payable only up to the end of the month preceding the date so intimated, or the date of posting the cheque, as the case may be:

. . . (omitted as not relevant)

NOTE.- Payment of interest on the Fund balance beyond a period of 6 months may be authorized by -

(a) the Head of Accounts Office (which expression includes the Pay and Accounts Officer, where there is one) up to a period of one year; and
(b) the immediate superior to the Head of Accounts Office (which expression includes a Controller of Accounts, where there is one or the Financial Adviser to the concerned Administrative Ministry or Department) up to any period;

after he has personally satisfied himself that the delay in payment was occasioned by circumstances beyond the control of the subscriber or the person to whom such payment was to be made, and in every such case the administrative delay involved in the matter shall be fully investigated and action, if any required taken.

12. In the present case, there is no dispute that the employers had not taken any steps to communicate their willingness to pay the provident fund dues on any particular date as contemplated in the first proviso. Therefore, the provisions contained in Rule 11(4) to the effect that interest is to be calculated for a period of six months from the date on which the Provident Fund became payable gets attracted. In the present case, termination order being passed on 8.2.2001, the Provident Fund became payable on such date and in the absence of any communication from the employers, as contemplated in Rule 11(4) first proviso, interest has to be calculated till the period of six months from the said date.

13. Our attention has also been invited to Note (a) and (b) of Rule 11(4). As per the aforesaid note, jurisdiction is conferred on the authorities indicated therein where interest can be calculated till a further date. However, such a decision is required to be taken by the appropriate authorities indicated in the said Note. For the aforesaid purpose, it would be open to the employee to file an appropriate application before the appropriate authorities which has to be considered by such authorities in accordance with law.

14. Having regard to all these facts and circumstances of the

case, the order passed by the Central Administrative Tribunal in O.A.No.64 0 of 2003 is modified and following directions are given :-
(i) The employee is entitled to receive interest at least upto 8.8.2001 in accordance with the main provision contained in Rule 11(4) of the Rules. Such interest should be calculated and paid within a period of two months from the date of receipt of a copy of the present order.
(ii) It would be open to the employee to file an appropriate application to the authorities contemplated under Note (a) and (b) of Rule 1 1(4) of the Rules and,if any, such application is filed within a period of one month from the date of receipt of this order, such application should be considered by the appropriate authorities in accordance with law. It is made clear that we have not expressed any opinion either way on the aforesaid aspect.

15. Subject to the aforesaid modification and observation, the writ petition is disposed of. No costs. Consequently, WPMP.No.15304 of 2004 is closed.

Index : Yes
Internet: Yes
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To

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